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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,847	02/27/2002	William B. Dragan	P-2354.CIP2	1763

7590 05/26/2004  
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EXAMINER

MANAHAN, TODD E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/085,847	Applicant(s) DRAGAN ET AL.	
	Examiner Todd E. Manahan	Art Unit 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-12 and 14 is/are rejected.
- 7) ☐ Claim(s) 7, 8 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Discko, Jr. (United States Patent No. 5,165,890).

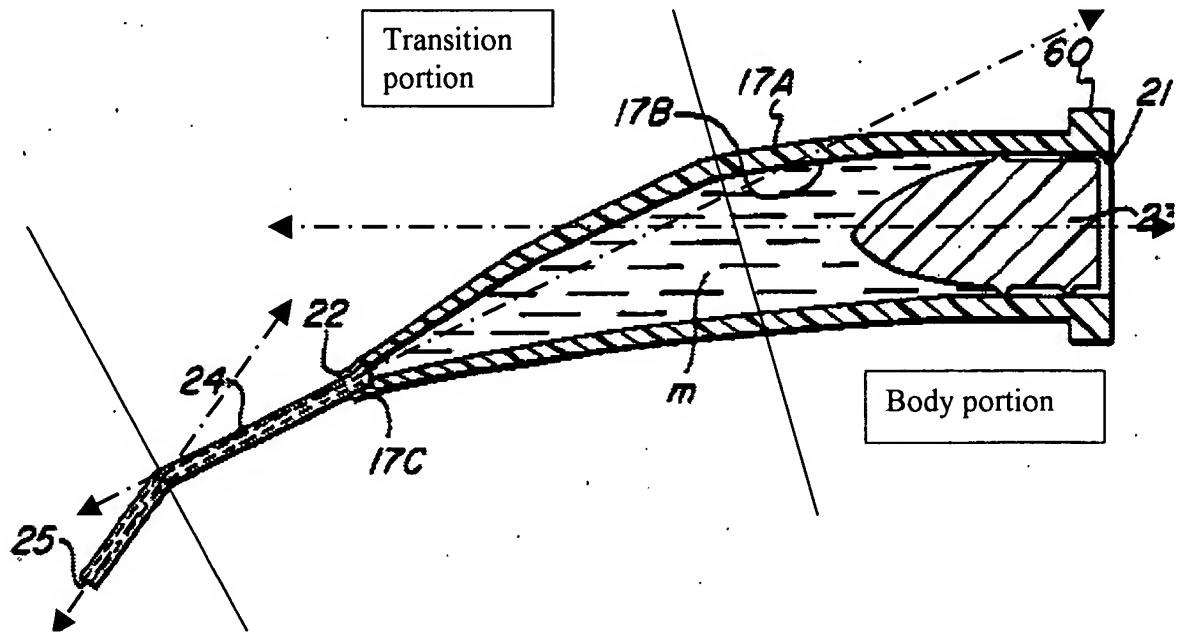
Discko, Jr. discloses a dental capsule providing comprising: a body portion 330 having a substantially constant first inside diameter and a body portion axis; a transition portion 340, adjacent said body portion, having a reducing inside diameter and a transition portion axis; and a discharge portion 332 having a substantially constant second inside diameter, adjacent said transition portion, and having a discharge portion axis. Said body portion axis intersects said translation portion axis forming a body-transition angle (the angle being 0 degrees) and said transition portion axis intersecting said discharge portion axis forming a transition-discharge angle. A flange 326 is attached to the body portion (see figure 5).

Claims 1, 4, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Discko, Jr. (United States Patent No. 5,052,927).

Discko, Jr. discloses a dental capsule providing comprising: a body portion having a substantially constant first inside diameter and a body portion axis; a transition portion, adjacent said body portion, having a reducing inside diameter and a transition portion axis; and a discharge portion 24 having a substantially constant second inside diameter, adjacent said

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transition portion, and having a discharge portion axis. Said body portion axis intersects said translation portion axis forming a body-transition angle (see figure below) and said transition portion axis intersecting said discharge portion axis forming a transition-discharge angle. A flange 60 is attached to the body portion



Claims 1, 4-6, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertins et al (United States Patent No. 5,165,890).

Mertins et al disclose a dental capsule providing comprising: a body portion 12 having a substantially constant first inside diameter and a body portion axis; a transition portion 16, adjacent said body portion, having a reducing inside diameter and a transition portion axis; and a discharge portion 14 having a substantially constant second inside diameter, adjacent said transition portion, and having a discharge portion axis. Said body portion axis intersects said transition portion axis forming a body-transition angle (the angle being 0 degrees) and said transition portion axis intersecting said discharge portion axis forming a transition-discharge

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angle. A flange 24 is attached to the body portion (see figure 1). The device is provided with a flexible piston 20.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,3,12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Discko, Jr. (United States Patent No. 5,052,927).

Discko, Jr. discloses the claimed invention except for specific size of the angles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device with a body transition angle of 30 degrees and a transition-discharge angle of 19.5 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 2, 3, 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mertins et al. (United States Patent No. 5,938,439) in view of Discko, Jr. (United States Patent No. 5,165,890).

Mertins et al disclose the invention essentially as claimed except for the body-transition angle being none zero. Discko, jr. discloses that it is known in the art to provide a dental capsule with a body-transition angle and transition-discharge angle that are both non-zero to improve visibility within the mouth cavity (see figure 3 and col. 4, lines 32-37). It would have

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been obvious to one skilled in the art to form the capsule of Mertins et al. with non-zero body-transition and transition-discharge angles in view of Disko, Jr. in order to improve visibility within the mouth cavity. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the device with a body transition angle of 30 degrees and a transition-discharge angle of 19.5 degrees since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Regarding claim 11, Disko, Jr. also discloses providing a cap.

***Allowable Subject Matter***

Claims 15-19 are allowed.

Claims 7, 8 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 03 March 2004 have been fully considered but they are not persuasive.

With respect to applicant's arguments that Disko, Jr. (United States Patent No. 5,165,890) does not show a dental capsule having three different axis that intersect applicant's attention is directed to the embodiment of figure 5. It is also to be noted that even though the axis of the transition portion is collinear with the axis of the body portion, they do intersect to form an angle, even though such angle is zero degrees. .

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With respect to applicant's arguments that applicant has discovered unexpected results with the claimed range in combination of the structure of the capsule, applicant has provided no evidence to support such allegation. As such, applicant's arguments of unexpected results is deemed moot.

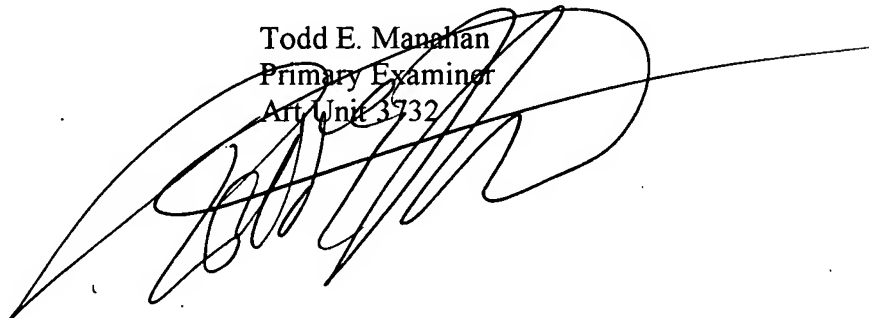
*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 703 308-2695. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 703 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd E. Manahan  
Primary Examiner  
Art Unit 3732



T.E. Manahan  
21 May 2004